

Message Text

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TO AMEMBASSY MEXICO

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FOLLOWING REPEAT IAEA VIENNA 0398 ACTION SECSTATE

IFO AEC GERMANTOWN JAN 16,

QUOTE

UNCLAS IAEA VIENNA 0398

E.O. 11652: N/A

TAGS: TECH, IAEA, US, MX

SUBJ: CONTRACTUAL ARRANGEMENTS FOR NUCLEAR FUEL SUPPLY TO
MEXICAN POWER REACTOR

REF: (A) LABOWITZ-FRIEDMAN LETTER, 4/13/73; (B) IAEA VIENNA 9240

1. SUMMARY: SECRETARIAT HAS PREPARED PRELIMINARY DRAFT
TRILATERAL SUPPLY AGREEMENT FOR SUBJECT PROJECT (TEXT
SEPTEL) WHICH AIMS TO SATISFY MINIMUM REQUIREMENTS OF
ATOMIC ENERGY ACT AND US-IAEA COOPERATION AGREEMENT
WHILE AVOIDING AGENCY'S BECOMING PARTY TO ACTUAL ENRICH-
MENT SERVICES CONTRACT BETWEEN US AND MEXICO. THIS
WOULD AVOID POTENTIAL PROBLEMS RELATING TO SAFEGUARDS,
AGENCY CONTINGENT LIABILITY, AND PRESENTATION OF
CONTRACT TEXT TO BOARD. ALSO, DRAFT PROPOSES HAVE
AGENCY ASSUME TITLE TO MATERIAL UPON EXPORT FROM
US TO AVOID SIMILAR PROBLEMS. ASSUMING LANGUAGE CAN BE
AGREED, SUPPLY AGREEMENT WILL BE PRESENTED TO FEBRUARY 12
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BOARD SESSION. ACTION REQUESTED: DEPT/AEC COMMENT ON

DRAFT AGREEMENT SOONEST. END SUMMARY.

2. MISOFFS MET WITH AGENCY LEGAL DIVISION OFFICERS STEIN AND HA VINH ON JANUARY 15 TO DISCUSS PRELIMINARY DRAFT OF TRILATERAL AGREEMENT FOR SUPPLY OF ENRICHMENT SERVICES FOR LAGUNA VERDE POWER REACTOR PREPARED BY SECRETARIAT (FULL TEXT SEPTTEL). ASSUMING AGREEMENT AMONG PARTIES, THIS AND ACCOMPANYING AGENCY-MEXICO BILATERAL PROJECT AGREEMENT WILL BE SUBMITTED TO FEBRUARY 12 SESSION OF BOARD OF GOVERNORS FOR ACTION.

3. STEIN EXPLAINED THAT DRAFT WAS PREPARED WITH AIM OF SATISFYING REQUIREMENTS OF ATOMIC ENERGY ACT AND US-IAEA BILATERAL, WHILE KEEPING AGENCY'S DIRECT INVOLVEMENT IN TRANSACTION TO MINIMUM NECESSARY TO ACCOMPLISH THIS. SECRETARIAT HAD CONCLUDED THAT THIS COULD BE DONE WITHOUT AGENCY'S BECOMING PARTY, EITHER DIRECTLY OR THROUGH AGENT (SMALL A) RELATIONSHIP WITH MEXICO, TO ENRICHMENT SERVICES CONTRACT ITSELF. LATTER COURSE WAS DESIRABLE TO AVOID FOLLOWING POTENTIAL PROBLEMS:

A. SAFEGUARDS: AS NOTED REF A, IF CONTRACTUAL ARRANGEMENTS COULD BE CONSTRUED AS AGENCY ITSELF SUPPLYING ENRICHMENT SERVICES TO MEXICO, SECRETARIAT FELT IT WOULD RUN AFOUL OF ARTICLE III.A.5 OF STATUTE UNLESS MATERIAL WERE UNDER SAFEGUARDS WHILE IN US ENRICHMENT PLANT. THIS KNOWN TO BE UNACCEPTABLE TO US, PER CONVERSATION REPORTED REF A. HOWEVER, IF AGENCY IS NOT RPT NOT PARTY TO ENRICHMENT SERVICES CONTRACT PROPER, ITS LEGAL INVOLVEMENT WITH MATERIAL IN CONNECTION THIS PROJECT WOULD COMMENCE ONLY SUBSEQUENT TO COMPLETION OF ACTUAL ENRICHMENT SERVICES, THUS AVOIDING SAFEGUARDS DURING ENRICHMENT.

B. CONTINGENT LIABILITY: STEIN SERIOUSLY QUESTIONED WHETHER AGENCY COULD BECOME PARTY, DIRECTLY OR THROUGH MEXICO AS AGENT, TO MULTIMILLION-DOLLAR COMMERCIAL CONTRACT, AND WHETHER BOARD WOULD ALLOW IT TO DO SO IN ANY EVENT. DESPITE INTENTION TO HAVE GOM HAVE RESPONSIBILITY FOR CONTRACT PERFORMANCE ON BEHALF OF AGENCY (AS NOTED STATE 220032), AGENCY COULD ACQUIRE SUBSTANTIAL CONTINGENT UNCLASSIFIED

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LIABILITY WHICH BOARD WOULD PROBABLY PREFER NOT TO INCUR AND WHICH SECRETARIAT WOULD GREATLY PREFER NOT ASKING IT TO.

C. PRESENTATION OF CONTRACT TO BOARD: NOTWITHSTANDING SUB-PARA B, IF AGENCY WERE TO BE PARTY TO ENRICHMENT SERVICES CONTRACT EITHER DIRECTLY OR THROUGH GOM AS AGENT, SECRETARIAT DEFINITELY FEELS THAT FULL TEXT OF

ENRICHMENT SERVICES CONTRACT WOULD HAVE TO BE PRESENTED TO BOARD FOR ITS CONSIDERATION AND APPROVAL. QUITE ASIDE FROM SHEER BULK AND COMPLEXITY OF DOCUMENT, SECRETARIAT FEELING IS THAT IT WOULD BE MISTAKE TO PRESENT THIS US DOCUMENT TO BOARD, WHICH COULD MAKE HASH OF IT AND SET UNDESIRABLE PRECEDENT FOR FUTURE SIMILAR CASES. COMMENT: MISSION AGREES. END COMMENT.

4. ACCORDINGLY, SECRETARIAT ADOPTED APPROACH OF ITS DRAFT, THAT OF RELATIVELY BRIEF TRILATERAL SUPPLY AGREEMENT BETWEEN GOM, USG AND AGENCY, WHICH BOARD WOULD CONSIDER AND APPROVE TO PROVIDE LEGAL BASIS FOR PROVISION OF ENRICHMENT SERVICES THROUGH DETAILED ENRICHMENT SERVICES CONTRACT (LONG-TERM CONTRACT) TO BE CONCLUDED DIRECTLY BETWEEN GOM AND USAEC. SUPPLY AGREEMENT WOULD REFER ALL DETAILED QUESTIONS, INCLUDING, INTER ALIA: SCHEDULE OF SERVICES AND QUANTITIES, ASSAYS AND TIMES OF DELIVERIES OF MATERIALS TO BE PROVIDED, TO LONG-TERM CONTRACT. TO AVOID ESTABLISHMENT OF IAEA AGENT RELATIONSHIP WITH MEXICO IN CONNECTION LONG-TERM CONTRACT, SECRETARIAT WOULD GREATLY PREFER FORMULATION "THE COMMISSION SHALL FURNISH TO THE AGENCY FOR MEXICO..." VICE "MEXICO ON BEHALF OF THE AGENCY..." USED IN PAST, IN ARTICLES I.1 AND II.1.

5. COMMENT: MISSION FEELS SECRETARIAT IS FOLLOWING RIGHT LINE IN THIS APPROACH, AND, AD REFERENDUM, SO INFORMED STEIN. ONLY QUESTION IN OUR MINDS IS WHETHER SUCH TRI-LATERAL SUPPLY AGREEMENT WOULD IN FACT SATISFY REQUIREMENTS OF ATOMIC ENERGY ACT AN
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